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HOUSE BILL 430

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Nathan P. Cote

AN ACT

RELATING TO TAXATION; CREATING A CREDIT AGAINST PERSONAL INCOME TAX IN AN AMOUNT EQUAL TO CERTAIN PROPERTY TAXES PAID BY NONRESIDENT EMPLOYEES OF CERTAIN MANUFACTURING, DISTRIBUTION OR LOGISTICS BUSINESSES LOCATED WITHIN TWENTY MILES OF AN INTERNATIONAL BORDER; AMENDING THE STANDARDS REQUIRED TO ALLOCATE INCOME TO ANOTHER STATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] TAX CREDIT--NONRESIDENT EMPLOYEES OF QUALIFIED BUSINESSES--AMOUNT OF NONRESIDENT PROPERTY TAX.--

A. A nonresident taxpayer who files an individual New Mexico income tax return and who is not a dependent of another individual may claim a tax credit if the taxpayer is an .174744.5

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1 employee of a business that has qualified pursuant to this  
2 section for the calendar year that includes the last day of the  
3 taxpayer's taxable year. The tax credit provided for in this  
4 section may be referred to as the "nonresident business  
5 employee tax credit".

6 B. The credit claimed pursuant to this section  
7 shall equal the lesser of:

8 (1) the amount of property tax paid by the  
9 taxpayer during the taxable year on the taxpayer's primary  
10 residence located in a state other than New Mexico; or

11 (2) one thousand nine hundred seventy-five  
12 dollars (\$1,975).

13 C. The nonresident business employee tax credit  
14 shall only be deducted from the taxpayer's New Mexico income  
15 tax liability for the taxable year, and any portion of the  
16 credit that remains unused at the end of the taxpayer's taxable  
17 year shall not be carried forward.

18 D. A husband and wife who file separate returns for  
19 a taxable year in which they could have filed a joint return  
20 may each claim only one-half of the credit that would have been  
21 allowed on a joint return.

22 E. To qualify for a calendar year pursuant to this  
23 section, a business shall submit documentation in a form  
24 determined by the department that includes a list of  
25 nonresident employees and that confirms that the business:

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1 (1) is located in New Mexico within twenty  
2 miles of an international border;

3 (2) is a manufacturing, distribution or  
4 logistics business;

5 (3) has not, either in the previous calendar  
6 year or the current calendar year, qualified for an exemption  
7 from the gross receipts tax pursuant to Section 7-9-110 NMSA  
8 1978;

9 (4) has a minimum of five full-time employees  
10 who are New Mexico residents; and

11 (5) meets one of the following criteria:

12 (a) the business had no payroll in New  
13 Mexico during the previous calendar year;

14 (b) the business had a payroll in New  
15 Mexico for less than the entire previous calendar year, and the  
16 first payroll of the current calendar year includes payments to  
17 New Mexico residents exceeding the highest monthly payroll for  
18 New Mexico residents in the previous calendar year; or

19 (c) the business had a payroll in New  
20 Mexico for the entire previous calendar year, and the first  
21 payroll of the current calendar year includes payments to New  
22 Mexico residents exceeding by at least ten percent the first  
23 payroll for New Mexico resident employees of the business in  
24 the previous calendar year.

25 F. A taxpayer may claim the nonresident business

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1 employee tax credit only for taxable years that begin within  
2 three years of the date that the taxpayer commences employment  
3 at the qualified business.

4 G. As used in this section:

5 (1) "business" means that portion of a  
6 business entity that is located within twenty miles of an  
7 international border;

8 (2) "distribution" means the process of  
9 transporting raw materials, components or finished products;

10 (3) "logistics" means services, including  
11 packing, storage, transportation, document processing and  
12 services needed to distribute products; and

13 (4) "manufacturing" means combining or  
14 processing components or materials to increase their value for  
15 sale in the ordinary course of business. "Manufacturing"  
16 includes the generation of electricity but does not include  
17 construction, farming or the processing of natural resources  
18 and hydrocarbons."

19 Section 2. Section 7-2-11 NMSA 1978 (being Laws 1965,  
20 Chapter 202, Section 9, as amended) is amended to read:

21 "7-2-11. TAX CREDIT--INCOME ALLOCATION AND  
22 APPORTIONMENT.--

23 A. Net income of any individual having income that  
24 is taxable both within and without this state shall be  
25 apportioned and allocated as follows:

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1 (1) during the first taxable year in which an  
2 individual incurs tax liability as a resident, only income  
3 earned on or after the date the individual became a resident  
4 and, in addition, income earned in New Mexico while a  
5 nonresident of New Mexico shall be allocated to New Mexico;

6 (2) except as provided otherwise in Paragraph  
7 (1) of this subsection, income other than compensation or  
8 gambling winnings shall be allocated and apportioned as  
9 provided in the Uniform Division of Income for Tax Purposes  
10 Act, but if the income is not allocated or apportioned by that  
11 act, then it may be allocated or apportioned in accordance with  
12 instructions, rulings or regulations of the secretary;

13 (3) except as provided otherwise in Paragraph  
14 (1) of this subsection, compensation and gambling winnings of a  
15 resident taxpayer shall be allocated to this state;

16 (4) compensation of a nonresident taxpayer  
17 shall be allocated to this state to the extent that such  
18 compensation is for activities, labor or personal services  
19 within this state; provided [~~(a)~~] that, if the activities,  
20 labor or services are performed in this state for fifteen or  
21 fewer days during the taxpayer's taxable year, the compensation  
22 may be allocated to the taxpayer's state of residence; [~~and~~

23 ~~(b) if the compensation is for~~  
24 ~~activities, labor or services performed for a business in the~~  
25 ~~manufacturing industry in New Mexico that is located within~~

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1 ~~twenty miles of an international border, that has a minimum of~~  
2 ~~five full-time employees who are New Mexico residents, is not~~  
3 ~~receiving development training funds under Section 21-19-7 NMSA~~  
4 ~~1978 and that meets the qualifications of one of Items 1)~~  
5 ~~through 4) of this subparagraph, the compensation may be~~  
6 ~~allocated to the taxpayer's state of residence: 1) the~~  
7 ~~business had no payroll in New Mexico during the previous~~  
8 ~~calendar year; 2) the business had a payroll in New Mexico for~~  
9 ~~less than the entire previous calendar year, and the first~~  
10 ~~payroll of the new calendar year includes payments to New~~  
11 ~~Mexico residents exceeding the highest monthly payroll for such~~  
12 ~~residents in the previous calendar year; 3) the business had a~~  
13 ~~payroll in New Mexico for the entire previous calendar year,~~  
14 ~~and the first payroll of the new calendar year includes~~  
15 ~~payments to New Mexico residents exceeding by at least ten~~  
16 ~~percent both the payroll for all employees in January 2001 and~~  
17 ~~the payroll for New Mexico residents twelve months prior to the~~  
18 ~~commencement of the new calendar year; or 4) the business had a~~  
19 ~~payroll in New Mexico for the entire previous calendar year,~~  
20 ~~but had no payroll in New Mexico within one year prior to~~  
21 ~~January 1, 2001, and the first payroll of the new calendar year~~  
22 ~~includes payments to New Mexico residents exceeding by at least~~  
23 ~~ten percent the payroll for such residents twelve months~~  
24 ~~earlier;]~~

25 (5) gambling winnings of a nonresident shall

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1 be allocated to this state if the gambling winnings arose from  
2 a source within this state; and

3 (6) other deductions and exemptions allowable  
4 in computing net income and not specifically allocated in the  
5 Uniform Division of Income for Tax Purposes Act shall be  
6 equitably allocated or apportioned in accordance with  
7 instructions, rulings or regulations of the secretary.

8 B. For the purposes of this section, "non-New  
9 Mexico percentage" means the percentage determined by dividing  
10 the difference between the taxpayer's net income and the sum of  
11 the amounts allocated or apportioned to New Mexico by that net  
12 income.

13 C. A taxpayer may claim a credit in an amount equal  
14 to the amount of tax determined to be due under Section 7-2-7  
15 or 7-2-7.1 NMSA 1978 multiplied by the non-New Mexico  
16 percentage."

17 Section 3. DELAYED REPEAL.--Section 1 of this act is  
18 repealed effective January 1, 2020.

19 Section 4. APPLICABILITY.--The provisions of this act are  
20 applicable to taxable years beginning on or after January 1,  
21 2010 and prior to January 1, 2020.

22 Section 5. EFFECTIVE DATE.--The effective date of the  
23 provisions of this act is January 1, 2010.